

FILED
KENNETH J. MURPHY
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

03 SEP 29 PM 3:47

REGINALD ALLEN,

*

Petitioner,

*

CASE NO. C-1-01-810

VS.

*

STATE OF OHIO,

*

and

*

ALAN LAZAROFF, Warden
Madison Correctional Institution

*

*

Respondents.

MOTION FOR BOND PENDING DISPOSITION
OF PETITIONER'S 28 U.S.C. § 2254 PETITION

Petitioner submits that he is entitled to bond pending disposition of his 2254 Petition, as he is clearly entitled to relief in his case and further incarceration will affect the Petitioner's substantial rights.

A defendant is entitled to bail pending disposition of his habeas petition if:

(1) there is a substantial claim that the defendant is confined in violation of the Constitution, and (2) there are exceptional circumstances present that warrant special treatment in the interest of justice Dotson vs. Clark, 900 F. 2d 77, 79 (6th C. 1990). In determining whether or not there is a "substantial" claim, a court must review the relief sought and relief which can be granted in the event the petition is successful Gomez vs. United States, 899 F. 2d 1124, 1125 (11th C. 1990).

The Petitioner submits that he meets the standard. First, as is evidenced from the Memorandum of Law filed with this court, the Petitioner's constitutional right to the effective assistance of counsel on appeal was violated in his case. Further, those rights prejudiced the

Petitioner's right to a fair trial in this case, and results in a conviction of a defendant who should not have been convicted of the offenses charged in this case. The Petitioner specifically incorporates herein the Memorandum of Law which was previously filed in this case, which evidences that he has a substantial constitutional claim which is entitled to relief in this case.

Further, the Petitioner can show that he has special circumstances in his case, in that he is serving time for an offense for which he should not be serving time and has served in effect a significant amount of time. The Petitioner files with this petition, Exhibit A, which is a printout from the Ohio Department of Rehabilitation and Corrections, showing the amount of time that he has served, and that the current release date is July 23, 2017. Thus, the Petitioner has already served over six years of a sentence for which he should not have been convicted, and therefore, is entitled to immediate release pending disposition of this petition.

Finally, the Petitioner submits that although he filed this case approximately two years ago, no action has been taken by the court to further the 2254 in this case, and therefore, pending disposition by this court, the Petitioner is entitled to relief.

WHEREFORE, Counsel respectfully requests that this court issue a bond pending disposition of the 2254 Petition in this matter.

Respectfully submitted,



Kevin M. Schad
Attorney for Petitioner
SCHAD & COOK
8240 Beckett Park Drive
Indian Springs OH 45011
513 / 870-4980; 513 / 870-4984
Email: kevinschad@yourattorneys.net

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document appended hereto has been sent this 26th day of September, 2003, by regular U.S. Mail, with sufficient postage affixed thereto to ensure delivery, addressed to:

Attorney General's Office
1600 Carew Tower
441 Vine St.
Cincinnati OH 45202



Kevin M. Schad
Attorney for Petitioner